

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JACKSON WOMEN'S HEALTH
ORGANIZATION, et al.

PLAINTIFFS

V.

CIVIL ACTION NO. 3:18-CV-171-CWR-FKB

THOMAS E. DOBBS, M.D., M.P.H.,
in his official capacity as State
Health Officer of the Mississippi
Department of Health, et al.

DEFENDANTS

**JOINT MOTION FOR A CONTINUANCE AND
REQUEST FOR EXPEDITED CONSIDERATION**

Plaintiffs and the official capacity State Defendants, Thomas E. Dobbs, M.D., M.P.H. and Kenneth Cleveland, M.D., jointly move the Court for an order amending the Case Management Order [Doc. 91] (as previously amended), and continuing the current trial setting. The Parties also respectfully request expedited consideration of this motion. In support thereof, the Parties would show as follows:

1. Parts 2 and 3 of this matter are currently set for a two-week trial calendar beginning December 6, 2021. Dispositive and *Daubert* motions were filed April 29, 2021. Responses to those motions are currently due June 18, 2021, and replies are due by July 2, 2021. The final Pretrial Conference is set for November 5, 2021.
2. On May 17, 2021, U.S. Supreme Court issued a writ of certiorari, accepting for review the decision of the Fifth Circuit affirming the permanent injunction of Mississippi's 15-week abortion law. [Doc. 240]. This development creates a substantial overlap between the timing of the ongoing proceedings in this Court and the Supreme

Court proceedings.

3. The Parties are in agreement that the obligations of counsel with respect to the Supreme Court proceedings render the December 6, 2021 trial date and the current briefing schedule for dispositive and *Daubert* motions unworkable. Therefore, the Parties respectfully request that the December 6 trial date be continued, and the briefing schedule for dispositive and *Daubert* motions extended until new dates to be determined by the Court.

4. The Court Clerk has informed the Parties that the Supreme Court is likely to hear oral argument during the November 2021 sitting. Petitioners' brief on the merits is currently due to be filed by July 1, 2021. Respondents' brief is due by August 2, 2021.

5. The Parties have jointly requested a 21-day extension of time from the Supreme Court Clerk for each side's briefs on the merits. If granted, Petitioners' brief would be due by July 22, 2021, Respondents' brief would be due by September 13, 2021, and Petitioners' reply would be due by October 13, 2021.

6. The Parties understand and respectfully acknowledge that any new trial date must be based on the convenience of the Court. Although Plaintiffs and Defendants agree that the trial date should be continued, the Parties disagree on the appropriate length of the continuance.

7. Defendants think that the Supreme Court's decision resolving the 15-week law appeal could have a significant effect on the issues to be tried in Part 2, and the conduct of that trial. Therefore, it is Defendants' position that the Court should hold a status conference within fourteen (14) days of the Supreme Court's decision to set a new

trial date and new briefing schedule for the *Daubert* and dispositive motions. Defendants agree with Plaintiffs that the new briefing deadlines should be set working backward from the trial date, but do not agree that briefing on those motions should move forward until after the Supreme Court has ruled.

8. Plaintiffs believe that mere speculation about whether or how the U.S. Supreme Court's decision about the 15-week ban will impact this matter—which has now been pending for more than three years—does not justify delaying a resolution until after the Supreme Court issues its decision. Therefore, it is Plaintiffs' position that a short continuance of the trial is warranted in order to avoid conflicts with the current Supreme Court briefing and argument schedule and that the trial should be reset for Spring 2022 or as soon thereafter as the Court's trial calendar will allow. Under the proposed new schedule, the remaining *Daubert* and dispositive motion briefing deadlines would likewise shift by the same amount of time (working backwards from the new trial date), also in order to avoid conflicts with the Supreme Court briefing schedule while still allowing time for these motions to be resolved in advance of trial.

9. In light of the time-sensitive nature of the requested relief, the Parties respectfully request that the Court expedite resolution of this matter, and hold a virtual hearing and/or status conference to resolve this motion and the scheduling issues at the Court's earliest convenience.

WHEREFORE, PREMISES CONSIDERED, the Parties jointly and respectfully request that the Court grant the relief requested herein, enter an order continuing the

December 6, 2021 trial date, and resetting the briefing schedule in light of the new trial date to be set by the Court.

Respectfully submitted, this 1st day of June, 2021.

LYNN FITCH, ATTORNEY GENERAL

By: *s/Paul Barnes*

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CERTIFICATE OF SERVICE

This is to certify that on this day I, Paul E. Barnes, Special Assistant Attorney General for the State of Mississippi, electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notice of such filing to all counsel of record.

THIS, the 1st day of June, 2021.

s/Paul Barnes

PAUL E. BARNES